

Minutes of the Board of Adjustment meeting held on Monday, August 12, 2013, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Travis Nay, Chair
Tom Halliday, Vice-Chair
Preston Olsen
Roger Ishino
Rosi Haidenthaller
Chad Wilkinson, Community Development Manager
Ray Christensen, Senior Planner
G.L. Critchfield, Deputy City Attorney
Citizens

The Staff Review meeting was held from 5:15 to 5:30 p.m. The Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

Travis Nay explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

APPROVAL OF MINUTES

Mr. Ishino made a motion to approve the minutes from July 8, 2013 as submitted. Mr. Halliday seconded the motion.

A voice vote was made. The motion passed, 5-0.

CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

CASE #1474 – JOSH JENSEN – 97 West Lester Avenue – Project #13-134

Josh Jensen was the applicant present to represent this request. Ray Christensen reviewed the location and request for an accessory building rear yard setback variance at the property addressed 97 West Lester Avenue. Murray City Code Section 17.100.090. E states: "An accessory building located in the rear yard must be located at least one foot from all property boundary lines." The applicant is requesting a one foot rear yard accessory building setback variance. The applicant is proposing to reconstruct a storage shed attached to the garage which was damaged by fire. The proposed reconstructed portion of the structure is about 8' X 20'. This property was annexed into Murray in October of 1997. The existing garage and shed do not comply with the required one ft. minimum rear yard setback. The applicant said he moved to the property in 2001 and the shed was located on the property at that time. A review of historic aerial photos of the property show the shed was not located on the property in 1995, but the 2003 photo show the shed is located on the property. The city does not have record of a permit for the shed and could have been constructed without a permit. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal does not meet the standards for a variance. Therefore, staff recommends denial of the variance.

Ms. Haidenthaller asked if Mr. Jensen has an option to push the proposed garage forward one foot or 18 inches. Mr. Christensen responded that the garage is setback approximately 18 feet from the home and could be moved forward to meet the minimum of a 6 foot separation from the home.

Mr. Nay asked Mr. Jensen if he intends to rebuild the garage, or is this merely adding a shed to the garage? Mr. Jensen responded it is an addition to the existing garage to replace what was destroyed by fire.

Josh Jensen, 97 West Lester Avenue, stated that it was previously a shed next to an older garage and he would like to convert the structure into a full garage. He stated that he tried to add onto the side, but there is no sheer strength on the front of the garage and therefore by adding the 8 feet onto the side will give it sheer strength on the front.

Mr. Olsen asked about the cause of the fire. Mr. Jensen responded that they had a goat that was inside the garage last January and the goat knocked the heat lamp over into the hay, causing the fire.

Mr. Halliday asked for clarification about the conversion of the existing structure(s) into one structure. Mr. Jensen explained that he would like to convert the structure into a two-car garage where it is currently used for storage. The side of the garage will be used for storage. He stated it is currently not functional as a garage. He stated when the fire occurred, it damaged the trusses and he needs to replace the trusses and would also like to install a new roof. He stated the existing garage is large enough for a two-car garage but is structurally unsafe at this point to park a vehicle in the garage due to the fire damage.

Ms. Haidenthaller asked about elevations for the proposed garage. Mr. Jensen responded that he does have new trusses planned for the garage which are 28 feet wide and 6 feet high and is the same as it currently exists.

Mr. Halliday asked if this structure is a nonconforming existing structure because it is located on the property line and if adding a new roof and a new exterior wall, if it would be considered an existing structure. Mr. Wilkinson responded there is the ability to keep portions of the structure and still be considered existing. The issue with this request is anytime there is a new addition, it must meet code, or have a variance granted to allow the construction to go forward. As long as portions of the building are retained, which would be part of the block wall and the entire opposite wall would be kept, the rear wall would still be considered to be a structure that is being modified. Any square footage that is added to an existing structure will need to meet the code. This is why this item is being considered, to determine whether or not that expansion should meet the current code. He stated if the expansion did meet the current codes it could be considered an expansion of a nonconforming structure.

Mr. Halliday asked Mr. Jensen if the reasoning for not bringing the back corner in by one foot is to simply not have a one foot jog in the roof line and exterior wall. Mr. Jensen stated he thought the rear yard setback for the structure was to be 5 or 6 feet. He stated that a one foot setback is much more appealing than a 5 or 6 foot setback, but he would prefer to have the structure be square. He stated that having a 1 foot setback would allow for weeds and garbage to be trapped between the structure and the fence.

Ms. Haidenthaller stated if the variance is denied because it is an expansion and the expansion should meet the new codes, what are Mr. Jensen's options. Mr. Jensen responded that he would need to move the rear wall forward. He stated that originally he was going to have the exterior material to be HardiPlank, but has since decided to have cinder block instead, and the remaining portion of the garage is cinder block.

Mr. Halliday asked the position of the roofline as it relates to the property line. Mr. Christensen responded that the closest point of the overhang should be at least one foot off property with the current code. Mr. Jensen stated that the fence has an obvious jog in it adjacent to the garage. He stated it is possible that the garage is a foot away from the property line but he has not had the property surveyed. He stated he is not sure if the fence line is or is not the property line because there is an obvious jog in the fence along the back of the property.

Mr. Halliday asked how the city would determine whether this property is nonconforming, if the property line is unknown. Mr. Christensen responded that the applicant presented the information regarding the property line and location of the structure. Mr. Jensen showed the Board members a photo from his cellphone of the fence line in relationship to the structure, and indicated he would submit a photo for the record. There was a discussion regarding the fence line, the structure and the property line. The power line is about 1 foot off the assumed property line. Mr. Jensen indicated that the Power Department did sign off on this proposal.

Mr. Wilkinson stated that the city relies on the applicant to provide property line information and some other cities require surveys to be done. The city makes a decision based upon the applicants' representation of the property line. He suggested that the Board not base their decision on the fence line, but should be based on where the property line is believed to be located. He asked if there is a hardship that is applicable that wouldn't require the new addition to be constructed to meet code.

Mr. Halliday stated if it is later determined that the property line is further back, Mr. Jensen could adjust the setback accordingly to meet code.

No comments were made from the public.

Ms. Haidenthaller questioned what is the hardship associated with this request.

Mr. Nay stated the goal is to keep properties in compliance with the code. This structure property has had a fire, which is a reason for requiring a setback separation, and questioned whether that makes a difference having most of the structure non-compliant and the new addition compliant by one foot.

Mr. Halliday expressed concern with knowing the true location of the property line and the fence line, but that the building codes must be met.

Mr. Olsen questioned whether this application meets a specific hardship for granting a variance, and that there does not appear to be anything particularly unique, other than there is an existing building and it would be nice to have the addition squared off. He stated that the garage could be brought forward so long as it maintains the minimum 6 foot separation from the dwelling.

Ms. Haidenthaller made a motion that the variance be denied as requested because the property does not meet the hardship requirements, and staff did outline that well in the findings. Seconded by Mr. Olsen.

Call vote recorded by Ray Christensen.

A _____ Preston Olsen
A _____ Roger Ishino
A _____ Rosi Haidenthaller
A _____ Tom Halliday
A _____ Travis Nay

Motion passed, 5-0.

Mr. Halliday made a motion to approve the Findings of Fact as proposed by staff.
Seconded by Mr. Ishino.

A voice vote was made. Motion passed, 5-0.

Meeting adjourned.



Chad Wilkinson, Manager
Community & Economic Development